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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,339	08/08/2000	Evan John Kaimowitz	3092/1G844-US1	4215

7590 07/15/2004
 Darby & Darby PC
 805 Third Avenue
 New York, NY 10022

EXAMINER

TRAN, QUOC A

ART UNIT	PAPER NUMBER
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2176

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/634,339

Applicant(s)

KAIMOWITZ, EVAN JOHN

Examiner

Quoc A. Tran

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 60/205,960.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to Amendment A, filed 05/06/2004.
2. Claims 1-24 are currently pending in this application. Claims 1, 6, and 12 are independent claims.
3. If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palm, Pub. No. US 2001/0042107 A1 issued 11/15/2001 filed 01/08/2001 provisional 60/174,706 filed 01/06/2000 (hereinafter '107), in view of Rasmussen et al. Patent No. 6,343,990 issued 02/05/2002 filed 01/27/2000 (hereinafter '990).

Claim 6 is representing of claim 7;

In regard to independent claim 6, "*downloading a voice clip to created by a voice-clip author to a user at a client machine from the Web site*", as taught by '107 at page. 4, paragraph [0074] (i.e. display content transmitted by the media server 115 (lists, titles, etc) with content generated locally on the client (elapsed time, eye candy, etc). In the traditional HTML environment ... used in combination with WML and WAP);

"*playing the voice clip at the client machine*", as taught by '107 at page.5, paragraph [0088] (i.e. the user is presented with a song list corresponding to the selected category... it will be played);

"selectively providing a response from the client machine to the Web site the response including a song name or artist's name", as taught by '107 at page. 4, paragraph [0078] through page. 5, paragraph [0080] (i.e. the default home page will include a description of what media clips are available from media server 115. Media clips can be video, audio, graphics, or other data capable of being digitized and downloaded across a network... user selects to play a song or a list of songs, in step 325 ...the media server);

"electronically notifying the voice-clip author in the event that said at least one predetermined criterion is satisfied", as taught by '107 at page. 1, paragraph [0006] (i.e. ... protocols and interfaces are needed to provide communication between the user player and media server so that the user may navigate and select the particular media items to be played. Once the user has made their selection, a format for describing the pieces of content, the ordering of play, and other information must also be communicated between the server and the player before the transmission of the actual media);

'107 does not explicitly teach, " awarding a benefit to the user for the response provided that at least one predetermined criterion is satisfied", however '990 taught at col. 2, lines 20-50 (i.e..... the Internet site functions as a forum where participants may post or submit content to the site and view the submissions of others...accumulate votes received from others and redeem them for cash or free access to the site...).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of '107 that featured the method for creating,

selecting, delivering multimedia of musical peaces with discovery engine from plurality internet entities, and the incentive bonus to user, who provided feed back of the music source (i.e. related material in the music forum). One of the ordinary skill in the art would have been motivated to modify this combination to encourage users participation and contribution of material and attracting more users to visit the web site for sales increasing, as taught by '990 at col. 1, line 40 through col. 2, line 5 (i.e....encourage users participation and contribution of material...).

In regard to dependent claim 8, "*the plural voice clips comprising a playlist*", as taught by '107 at page. 1, paragraph [0012] (i.e....playlist).

In regard to dependent claim 9, "*wherein the voice clips in the playlist are compiled so as to more evenly distribute voice clips to plural users*", as taught by '107 at page. 4, paragraph [0077] (i.e.... identify and display all discovered Media Servers 115 available to provide multimedia content ... connected to the public communications network ...).

In regard to dependent claim 10, "including the additional step of deleting one or more voice clips from the database in response to at least one predetermined criterion", as taught by '107 at page. 4, paragraph [0041] (i.e.... dynamically generates ... the play lists based on the multimedia device's requests ...).

In regard to dependent claim 11, "*wherein the user has voice clips downloaded to the client machine which have not been previously downloaded to that user*", as taught by '107 at page. 1, paragraph [0006] (i.e.... the pieces of content, the ordering of

play, and other information must also be communicated between the server and the player before the transmission of the actual media ...).

In regard to dependent claim 7, "*wherein at least one predetermined criterion is that plural responses from other users*", as taught by '990 at col. 2, lines 27-30 (i.e.... the Internet site functions as a forum where participants may post or submit content to the site and view the submissions of others).

5. Claims 1-5, and 12-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch Patent No. US 6,247,130 B1 issued 06/12/2001 filed 01/18/2000 (hereinafter '130), in view of Rasmussen et al. Patent No. 6,343,990 issued 02/05/2002 filed 01/27/2000 (hereinafter '990), and further in view of Ghias et al. Patent No. 5,874,686 issued 02/23/1999 filed 10/31/1996 (hereinafter '686).

Claim 1 is representing of claim 5;

In regard to independent claim 1, "*providing the voice clip to a server connected to the Internet*", as taught by '130 at col. 3, lines 10-18 (i.e.... a network-based system for distribution of musical products over a network, such as the Internet ... a server platform for processing user requests ... The server is connected to a database, which may be remote or local, for storing data. The stored data represents digitized songs, text associated with each song such as track name, album name, artist name, lyrics, etc ...);

"selectively providing further information relating to the song to the server", as taught by '130 at col. 3, lines 1-5 (i.e.... a consumer may browse through artists, tracks

or albums, pre-listen to a portion of the song and purchase the selected song either by downloading the digital data to her computer hard drive or by placing a mail order ...”;

‘130 does not explicitly teach, “*making the voice clip and any further information available to a human visitor to the server, permitting multiple human visitors to post the name of the song to the server, receiving at the client machine an electronic notification from the server that the song has been identified*”, however as taught by ‘990 at col. 2, lines 28-30 (i.e.... Internet site functions as a forum where participants may post or submit content to the site and view the submissions of others), also as taught by ‘990 at col. 7, lines 25-30 (i.e. It will be understood from the foregoing that while the subject or topic of the Internet site described above has related to jokes, the topic may alternatively involve a variety of other content. For instance, topic may relate to other types of textual matter such as ... audio matter, such as music; or multi-media matter ...), also as taught by ‘990 at col. 4, lines 1-5 (i.e.... obtaining statistical information relating thereto...).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of ‘130 that featured the method for creating, selecting, delivering multimedia of musical peaces with discovery engine from plurality internet entities, and the incentive bonus to users who provided feed back of the music source. One of the ordinary skill in the art would have been motivated to modify this combination to encourage users participation and contribution of material and attracting more users to visit the web site for sales increasing, as taught by ‘990 at col. 1, line 40

through col. 2, line 5 (i.e....encourage users participation and contribution of material ...).

'130 and '990 do not explicitly teach, "*inputting a voice clip of a portion of the song into a microphone connected to a client machine*", however as taught by '686 at col. 1, line 60 through col. 2, line 3 (i.e.... easily, efficiently, and accurately search melodies, in accordance with the present invention, a computer means is provided which has a database of melodies each including a plurality of notes in a form of a sequence of digitized representations of relative pitch differences between successive notes, a melody is inputted to the computer means and converted into a form of a sequence of digitized representations of relative pitch differences between successive notes thereof, and the melody database is searched for at least one sequence of digitized representations of relative pitch differences between successive notes which at least approximately matches the sequence of digitized representations of relative pitch differences between successive notes of the melody...).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of '107 that featured the method for inputting a melody/hummed to a computer and converted into a digital form, that will be matches with database of melodies/public domain MIDI songs and producing the related material. One of the ordinary skill in the art would have been motivated to modify this combination to offered opportunities for electronic commerce of massive proportions. whereby consumers can easily and quickly find and purchase individual tracks or entire albums that are deemed to be of relevance and interest, as taught by '130 at col. 1,

lines 15-30 (i.e.... whereby consumers can easily and quickly find and purchase individual tracks or entire albums...).

In regard to dependent claim 2, *"wherein the electronic notification includes a hypertext link to a predetermined page constructable by the server"*, as taught by '130 at col. 4, lines 5-10 (i.e.... including hyperlinks to other web sites, pages, etc...).

In regard to dependent claim 3, *"wherein the electronic notification includes at least one of the name of the song and the artist"*, as taught by '130 at col. 3, lines 50-55 (i.e.... web site display...songs by artist...).

In regard to dependent claim 4, incorporate substantially similar subject matter as cited in claim 1 above, and is similarly rejected along the same rationale.

In regard to dependent claim 5, *"issuing a benefit to those additional human users who submitted responses that had matching data"*, as taught by '990 at col. 2, lines 20-50 (i.e..... the Internet site functions as a forum where participants may post or submit content to the site and view the submissions of others...accumulate votes received from others and redeem them for cash or free access to the site...).

In regard to independent claim 12, incorporate substantially similar subject matter as cited in independent claim 1 above, and in further view of the following, and are similarly rejected along the same rationale;

"microphone of a telephone as well as first user identification information", as taught by '130 at col. 3, lines 20-50 (i.e..... connected to the Internet is a plurality of nodes, such as personal computers, Web devices, etc., under control by the users (hereinafter collectively referred to as PC users). The PC users communicate with the

server using dial-up modems, cable modems, IDSN, DSL, etc., and using browser programs executing on their personal computers or other Internet-compatible devices, as well known to those skilled in the art. Communication links or sessions are established between the PC users and the server, via the Internet, when the PC users log onto the web site hosted by the server).

In regard to dependent claim 13, incorporate substantially similar subject matter as cited in claim 2 above, and in further view of the following, and is similarly rejected along the same rationale;

In regard to dependent claim 14, incorporate substantially similar subject matter as cited in claim 3 above, and in further view of the following, and is similarly rejected along the same rationale;

In regard to dependent claim 15, incorporate substantially similar subject matter as cited in claim 4 above, and in further view of the following, and is similarly rejected along the same rationale;

In regard to dependent claim 16, incorporate substantially similar subject matter as cited in claim 5 above, and in further view of the following, and is similarly rejected along the same rationale.

In regard to dependent claim 17, *"wherein the first user identification information is received automatically from the client machine upon accessing the server"*, as taught by '130 at col. 1, lines 54-59 (i.e..... The same assigned key is transferred to the user prior to downloading the track. The transferred key is combined

with additional data to generate an identifier that uniquely identifies a customer's computer...).

In regard to dependent claim 18, *"wherein the first user identification information is received automatically from a cookie stored on the client machine"*, as taught by '130 at col. 1, lines 54-59 (i.e..... As a result, the new key uniquely identifies the customer and the customer's hardware. This key is then stored to the customer hard drive).

In regard to dependent claim 19, *"wherein the first user identification information is received from the client machine in response to manual input by the first user"*, as taught by '130 at col. 4, lines 20-25 (i.e..... When a new PC user logs in, she selects a username and password and then clicks on the "New User" software button on the screen. The new PC user is then requested to re-confirm the selected password by entering the password once more...).

In regard to dependent claim 20, *"a first voice clip among the plural voice clips while a next voice clip among the plural voice clip is loaded into a buffer memory of the client machine"*, as taught by '130 at col. 3, lines 60-67 (i.e. a music player for playing the digital music downloaded via the Internet from the server is displayed in the main section of the screen. The music player, known as "MCY NETrax Player", may be downloaded to the PC also via the Internet from the server and contains operation controls for listening to the downloaded digital music).

In regard to dependent claim 21, incorporate substantially similar subject matter as cited in claim 1 above, and is similarly rejected along the same rationale.

In regard to dependent claims 22, and 24, incorporate substantially similar subject matter as cited in claim 5 above, and are similarly rejected along the same rationale.

In regard to dependent claim 23, incorporate substantially similar subject matter as cited in claim 4 above, and is similarly rejected along the same rationale.

Response to Arguments

6. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

In view of Amendment A, the following references has been added for new ground of rejection:

Fritsch	U.S. Patent No. 6,247,130 B1	issued 06/12/2001	filed 01/18/2000
Rasmussen et al.	U.S. Patent No. 6,343,990 B1	issued 02/05/2002	filed 01/27/2000
Ghias et al.	U.S. Patent No. 5,874,686	issued 02/23/1999	filed 10/31/1996

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the


shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quoc A. Tran whose telephone number is (703) 305-8781. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (703) 305-9792. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quoc A. Tran
Patent Examiner
Technology Center 2176
June 29, 2004


JOSEPH FEILD
SUPERVISORY PATENT EXAMINER